LIBRARY
SUPREME COURT, U. S.
Office-Supreme Court, U.S.
FILED
MAR 2 9 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 886

SOUTH ATLANTIC & GULF COAST DISTRICT OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, ET AL.,

Petitioners,

v.

HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE FIRST SUPREME JUDICIAL DISTRICT AT HOUSTON, TEXAS

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

L. G. CLINTON, JR.

THOMAS R. MCDADE

FULBRIGHT, CROOKER, FREEMAN, BATES & JAWORSKI
Bank of the Southwest Building
Houston 2, Texas

J. L. LOCKETT, JR.
P. O. Box 2562
Houston 1, Texas

Attorneys for Respondent

BORG PRINTING COMPANY OF TEXAS, HOUSTON, TEXAS

INDEX

	Page
OPINIONS BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED FOR REVIEW	3
STATEMENT	3
REASONS FOR REFUSING TO GRANT THE WRIT OF CERTIORARI:	
POINT ONE: The Harris County - Houston Ship Channel Navigation District is a governmental agency and a political subdivision of the State of Texas and is not an employer within the meaning of the Labor Management Relations Act, as amended	5
POINT TWO: The National Labor Relations Board has no jurisdiction over this Respondent employer, Harris County-Houston Ship Channel Navigation District	6
POINT THREE: Strikes and picketing against a governmental agency and a political subdiviison of the State of Texas are against the public policy of the State of Texas	8
POINT FOUR: The decisions below do not conflict with any decision of this Court, or the Constitution or any law of the United States	9
CONCLUSION	12
CERTIFICATE OF SERVICE	13
Appendix	1a

CITATIONS

CASES:

Allen Bradley Local 111 v. WERB, 315 U.S. 740 (1941)	10
Benz v. Compania Naviera Hidalgo, 353 U.S. 138 (1957)	10
Building Service Employers International Union, Local 262 v. Gazzam, 339 U.S. 532 (1949)	11
City of Alcoa v. International Brotherhood of Electrical Workers, 203 Tenn. 12, 308 S.W. 2d 476 (1957)	8, 11

	PAGE
City of Detroit v. Division 26 of Amalgamated Association, 51 N.W. 2d 228 (S. Ct. Mich. 1952) cert. denied 344 U.S. 805 (1952)	11-12
Hughes v. Superior Court, 339 U.S. 460 (1949)	10-11
International Brotherhood v. Grand River Dam Authority, 292 P. 2d 1018 (S. Ct. Okla., 1956)	8
International Longshoremens Association v. Georgia Ports Authority, 217 Ga. 212, 124 S.E. 2d 733 (1962) cert. denied 370 U.S. 922 (1962)	8, 9, 12
Local Union No. 10 v. Graham, 345 U.S. 192 (1952)	11
Mobile Steamship Association, et al, 8 NLRB 1297 (1938)	7
NLRB v. Fansteel Corporation, 306 U.S. 240 (1936)	10
NLRB v. Sands Manufacturing Company, 306 U.S. 332 (1936)	10
New Bedford Steamship Authority, 127 NLRB 1322 (1960)	7
Norwalk Teachers' Ass'n. v. Board of Education, 138 Conn. 269, 83 A. 2d 482 (1951)	9, 11
Nutter v. City of Santa Monica, 74 Cal. App. 2d 331, 168 P. 2d 741 (1946)	9
Papermakers Importing Co., Inc., 116 NLRB 267 (1956)	7
Port of Seattle v. Longshoremen's Union, 324 P. 2d 1099 (S. Ct., Wash. 1958)	9
San Diego Building Trades Council, Millmens' Local 2020, Building Material and Dump Drivers Local 36 v. Garmon, 359 U.S. 236 (1959)	6
Southern SS Company v. NLRB, 316 U.S. 31 (1941)	10
State v. Brotherhood of R. Trainmen, 37 Cal. 2d 413, 232 P. 2d 857 (1951) cert. denied 342 U.S. 876 (1951)	9
United Public Workers v. Mitchell, 330 U.S. 75 (1946)	9, 10

CONSTITUTIONS AND STATUTES:

Sec. 1257(3), Title 28 USCA	2
Sec. 152(2), Title 29 USCA	6, 7
Sec. 152(3), Title 29 USCA	6, 7
Sec. 157, Title 29 USCA	7
Sec. 158, Title 29 USCA	7
Acts 1927, 40th [Tex.] Leg., 1st C.S., p. 256, ch. 97	6
Article 5154c, Texas Revised Civil Statutes	9
Texas Constitution, Article 16, Sec. 59	3, 6

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 886

SOUTH ATLANTIC & GULF COAST DISTRICT OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, ET AL,

Petitioners,

v.

HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE FIRST SUPREME JUDICIAL DISTRICT AT HOUSTON, TEXAS

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

Pursuant to Rule 40, paragraph 3, of the Rules of this Honorable Court, Respondent, Harris County-Houston Ship Channel Navigation District, adopts as correct the statement contained in the Petition with respect to **OPINIONS**

BELOW and the **APPENDICES**, with the exception of two (2) inaccuracies contained therein.

The Petition states that the "opinion of the Court of Civil Appeals for the First Supreme Judicial District, Houston, Texas, affirming the grant of the temporary injunction was rendered on September 20, 1962. . . ." (Petition, p. 2). This statement is in error in that the opinion was rendered on May 31, 1962, as is reflected in the opinion reported at 358 S.W. 2d 658.

The second inaccuracy appears initially at page 2 of the Petition when it is inferred that the opinion of the Court of Civil Appeals for the First Supreme Judicial District at Houston, Texas is correctly stated. The reported opinion of the Court below, as stated in the Petition (p. 2), appears at 358 S.W. 2d 658 and is copied into the **APPENDICES** to the Petition beginning at page 10a thereof. Instead of the designation "Appellee" at line 31 of page 12a, the designation should read "Appellant". As reflected in the reported opinion of the court below (358 S.W. 2d 658), that portion of the opinion reads:

> "Appellants assert that in no case do the State Courts of Texas have jurisdiction of a labor relations matter affecting interstate commerce, citing Ex parte Twedell, 158 Tex. 214, 309 S.W. 2d 834, and Ex parte Dilley, 160 Tex. 522, 334 S.W. 2d 425. We do not consider that the cases cited stand for the proposition urged." (Page 661)

JURISDICTION

While the Supreme Court of the United States has jurisdiction to review the decisions rendered by the court below [28 U.S.C.A. § 1257 (3)], Respondent respectfully submits that in the exercise of sound judicial discretion this Honorable Court will deny review since the decisions of the Court of Civil Appeals for the First Supreme Judicial District of Houston, Texas do not involve a federal substantive ques-

tion not heretofore decided by this Honorable Court, nor are such decisions by the court below discordant with the decisions of this Court.

QUESTIONS PRESENTED FOR REVIEW

1.

Whether or not Petitioners have any right which is arguably within the protection or prohibition of the Labor Management Relations Act, as amended, to engage in strikes and picketing against a governmental agency and a political subdivision of the State of Texas.

2.

Whether or not the right of a governmental agency and a political subdivision of the State of Texas to be free from strikes and picketing is abrogated by any right or privilege existing under either the Constitution or any law of the United States.

STATEMENT

Almost all of the material facts in this case were agreed upon by Stipulations, which were received in evidence by the Trial Court during the hearing on temporary injunction. These Stipulations are set forth in full in the Appendix.

Respondent is a governmental agency and a political subdivision of the State of Texas, existing under Article XVI, Section 59 of the Constitution and the laws of the State of Texas. (App. pp. 1a, 2a; S.F. 3, 4; Petition, p. 3).

During 1961, a Bulk Materials Handling Plant was constructed on Respondent's property in Harris County, Texas. (App., p. 3a). Prior to the operation of this new plant, Respondent assigned the various jobs in this new plant to workmen represented by International Longshoremen's

Union Local 1530 rather than to workmen represented by Locals 872 and 1273. (App., p. 3a). The stipulated facts refute Petitioners' contention that any workmen had "been put out of jobs" by Respondent. (Petition, p. 6).

In November, 1961 an International Longshoremen's Union, hereinafter referred to as "ILA", picketed Respondent and employees of Respondent engaged in a strike. Respondent filed a Charge against that Local Union with the Regional Director of the National Labor Relations Board, in Houston, Texas, charging that the picketing and strike caused by this Local Union was an unfair labor practice in violation of the Labor Management Relations Act, as amended. The Regional Director of the National Labor Relations Board dismissed the Charge against the Union on the ground that the Respondent was a political subdivision of the State of Texas and accordingly was not an "employer", nor were the persons working for it "employees", as those terms used in the Labor Management Relations Act, as amended. (S.F. 32-37). The dismissal of the Charge by said Regional Director was appealed by Respondent to the Office of the General Counsel of the National Labor Relations Board and Respondent was advised January 3, 1962 that for the reasons stated by said Regional Director, further proceedings were not warranted. (S.F. 39-40).

On or about January 5, 1962, representatives of Locals 872 and 1273 requested that certain work at the Respondent's new facility be performed by members of said Locals and other persons working through the hiring halls of these Local Unions. As Respondent refused, Locals 872 and 1273 caused two (2) pickets to be established at the intersection of the only road leading to the plant. (App., p. 3a). As a result of the establishment of the picketing conducted against Respondent, a total work stoppage occurred at the

Respondent's Bulk Materials Handling Plant. Thereafter Petitioners continued such demand upon Respondent, and continued their efforts to obtain such work. (S.F. 133-134). The Trial Court entered Findings of Fact and Conclusions of Law in support of its Orders granting Respondent a temporary and a permanent injunction against Petitioners.

Petitioners state (Petition, p. 4), "that the picketing was at all times lawful . . . and in compliance with the laws of Texas regulating picketing." This is a misstatement. Conclusion of Law No. 9 entered by the Trial Court in granting both the temporary and the permanent injunctions (Petition, pps. 8a and 25a) was that the picketing engaged in by Petitioners was *unlawful* under the laws of the State of Texas. The Court of Civil Appeals for the First Judicial District at Houston, Texas affirmed these holdings. (358 S.W. 2d 658 on temporary injunction; 360 S.W. 2d 181 on permanent injunction).

REASONS FOR REFUSING TO GRANT THE WRIT OF CERTIORARI

POINT ONE

THE HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT IS A GOVERNMENTAL AGENCY AND A POLITICAL SUBDIVISION OF THE STATE OF TEXAS AND IS NOT AN EMPLOYER WITHIN THE MEANING OF THE LABOR MANAGEMENT RELATIONS ACT, AS AMENDED.

A governmental agency and a political subdivision of a State are expressly excluded from the definition of the term "employer" in the Labor Management Relations Act, as amended. Employees of such bodies politic are not covered as "employees" within the meaning of said Act.

The Labor Management Relations Act, as amended, Section 2 (2), [29 U.S.C.A. § 152 (2)], states in part:

> "(2) The term 'employer' . . . shall not include . . . any state or political subdivision thereof."

Section 2 (3) of the Labor Management Relations Act, as amended, [29 U.S.C.A. § 152 (3)] states in part:

> "The term 'employee' shall include any employee . . . but shall not include any individual employed . . . by any . . . person who is not an employer as herein defined."

The critical issue with respect to the propriety of the court below enjoining the picketing and striking against Respondent is whether Respondent is a governmental agency and a political subdivision of the State of Texas. Respondent exists as a governmental agency and a body politic under the provisions of Article XVI, Section 59 of the Constitution of the State of Texas. Respondent, Harris County-Houston Ship Channel Navigation District, was created and established by the 40th Texas Legislature, Acts 1927, 40th Leg., 1st C.S., p. 256, ch. 97. Petitioners conceded and stipulated that Respondent is a governmental agency and a political subdivision of the State of Texas. (Petition, p. 3; S.F. 3, 4; App., pps. 1a and 2a).

POINT TWO

THE NATIONAL LABOR RELATIONS BOARD HAS NO JURISDICTION OVER THIS RESPONDENT EMPLOYER, HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT.

The doctrine of Federal Preemption was most broadly stated by this Honorable Court in *San Diego Building Trades Council, Millmens' Local 2020 Building Material*

and Dump Drivers Local 36 v. *Garmon*, 359 U.S. 236, that when an activity is arguably protected by Section 7 of the Labor Management Relations Act, as amended, or is arguably prohibited by Section 8 of said Act, the State Courts, as well as the Federal Courts, must defer to the exclusive jurisdiction of the National Labor Relations Board.

The contention as urged by Petitioners that a State may not intervene in a labor dispute which is arguably protected or prohibited by the Labor Management Relations Act, as amended, is patently inapplicable to this case, as said Act does not regulate *governmental* employer-employee relations. Congress has consistently excluded governmental employer-employee relations from the Federal labor relations statutes.

The National Labor Relations Board has always given effect to the clear wording of Sections 2(2) and 2(3) of the Labor Management Relations Act, as amended. *Papermakers Importing Co., Inc.*, 116 N.L.R.B. 267 (1956); *New Bedford Steamship Authority*, 127 N.L.R.B. 1322 (1960). The National Labor Relations Board has continually refused, and not merely declined, Federal jurisdiction over employers similar to the Respondent herein. The National Labor Relations Board in *New Bedford Steamship Authority, supra*, held that:

> "Section 2(2) of our Act, in relevant part, and its predecessor in the Taft-Hartley and Wagner Acts, provides that 'The term "employer" . . . shall not include the United States , . . or any State or political subdivision thereof . . .' Since the appearance of this language and the orignial or Wagner Act, the Board has consistently held that it was deprived of jurisdiction over governmental employers, i.e., the United States or any State or political subdivision of a State."

Accord: *Mobile Steamship Association, et al*, 8 N.L.R.B. 1297 (1938).

The decisions of the court below are in accord with decisions of other state courts in cases dealing with governmental agencies. *International Longshoremen's Association* v. *Georgia Ports Authority*, 217 Ga. 212, 124 S.E. 2d 733 (1962) cert. den. 370 U.S. 922; *International Brotherhood* v. *Grand River Dam Authority*, 292 P. 2d 1018 (S. Ct., Okla., 1956); *City of Alcoa* v. *International Brotherhood of Electrical Workers*, 203 Tenn. 12, 308 S.W. 2d 476 (1957).

In the recent decision in *International Longshoremen's Association* v. *Georgia Ports Authority*, *supra*, the Supreme Court of the State of Georgia held that the Georgia Ports Authority, as an employer, was excluded from the provisions of the Labor Management Relations Act, as amended, as that port authority was a political subdivision of the State of Georgia. Counsel in that case urged before the Supreme Court of Georgia and this Honorable Court essentially the same propositions as are here being urged. In that case, as in this case, the ILA picketed a governmental port authority in an attempt to obtain employment for workmen represented by the ILA. The Georgia Supreme Court rejected the argument that the jurisdiction of the state court was preempted, holding that the term "employer" and the term "employee" as defined in the Labor Management Relations Act, as amended, excludes political subdivisions of a state and its employees, and affirmed the Trial Court's granting of injunctive relief to the governmental agency. The Petitioners request for Writ of Certiorari in that case was denied by this Honorable Court at 370 U.S. 922 (June 18, 1962).

POINT THREE

STRIKES AND PICKETING AGAINST A GOVERNMENTAL AGENCY AND A POLITICAL SUBDIVISION OF THE STATE OF TEXAS ARE AGAINST THE PUBLIC POLICY OF THE STATE OF TEXAS.

The Trial Court in Conclusions of Law Nos. 8 and 9 (Petition, pps. 8a and 25a) and the Court of Civil Appeals for the First Supreme Judicial District of Houston, Texas affirmed (358 S.W. 2d 658, 663; 360 S.W. 2d 181) that the strike and or organized work stoppage and the picketing were against the public policy of the State of Texas, as set forth in Article 5154c, Texas Revised Civil Statutes. This holding is in accord with the decisions reached by courts in other states. See, e.g., *International Longshoremen's Association* v. *Georgia Ports Authority*, *supra*, petition for writ of cert. denied, 370 U.S. 922 (June 18, 1962); *State* v. *Brotherhood of R. Trainmen*, 37 Cal. 2d 413, 232 P. 2d 857 (1951) cert. den. 342 U.S. 876; *Nutter* v. *City of Santa Monica*, 74 Cal. App. 2d 331, 168 P. 2d 741 (1946); *Port of Seattle* v. *Longshoreman's Union*, 324 P. 2d 1099 (S. Ct., Wash., 1958); *Norwalk Teachers' Asso.* v. *Board of Education*, 138 Conn. 269, 83 A. 2d 482 (1951).

POINT FOUR

THE DECISIONS BELOW DO NO CONFLICT WITH ANY DECISION OF THIS COURT, OR THE CONSTITUTION OR ANY LAW OF THE UNITED STATES.

Petitioners attack the constitutionality of Article 5154c, Texas Revised Civil Statutes. There are many cases in which this Honorable Court has held that limitations on the rights of governmental employees may be affected without any abridgement of constitutional rights. In *United Public Workers* v. *Mitchell*, 330 U.S. 75, this Court in holding that the Hatch Act, which prohibits governmental employees from engaging in certain types of political activities, was constitutional, stated:

> "Of course, it is accepted constitutional doctrine that these fundamental human rights are not absolutes. * * * The essential rights of the First Amendment in some

> instances are subject to the elemental need for order without which the guarantees of civil rights to others would be a mockery." (Page 95.)

Petitioners herein assert that their rights of freedom of speech under the Constitution and laws of the United States were denied them by the injunctions issued by the Trial Court and the decisions of the court below. A state does not have to permit picketing for all purposes to be conducted. It is clear that the restrictions which have been imposed on Petitioners' right of free speech do not constitute an unconstitutional or unlawful abridgement of their freedom of speech.

This Honorable Court has repeatedly held that picketing for an unlawful object is not constitutionally privileged and may be banned by the States. Illustrative of unprotected conduct that State Courts have power to prevent are: sit-down strikes, *NLRB* v. *Fansteel Corporation*, 306 U.S. 240; mutinies, *Southern SS Company* v. *NLRB*, 316 U.S. 31; strikes and picketing accompanied by violence, *Allen Bradley Local 111* v. *WERB*, 315 U.S. 740; strikes in violation of contract, *NLRB* v. *Sands Manufacturing Company*, 306 U.S. 332; and picketing to secure more favorable terms of employment in violation of an agreement, *Benz* v. *Compania Naviera Hidalgo*, 353 U.S. 138.

In *Hughes* v. *Superior Court*, 339 U.S. 460, this Court upheld the constitutionality of the State ban against picketing because of its unlawful purpose, stating:

> "[T]he domain of liberty, withdrawn by the Fourteenth Amendment from encroachment by the states Palko v. Connecticut, 302 U.S. 319, 327, 82 L. ed. 288, 293, 58 S. Ct. 149, no doubt includes liberty of thought and appropriate means for expressing it. But while picketing is a mode of communication it is inseparably something more and different. Industrial picketing 'is more than free speech, since it involves patrol of a par-

> ticular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated.' * * * However general or loose the language of opinions, the specific situations have controlled decision. It has been amply recognized that picketing, not being the equivalent of speech as a matter of fact, is not its inevitable legal equivalent. Picketing is not beyond the control of a State if the manner in which picketing is conducted or the purpose which it seeks to effectuate gives grounds for its disallowance. . . . A state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual." (Pages 464-465).

Accord: *Local Union No. 10* v. *Graham*, 345 U.S. 192; *Building Service Employers International Union, Local 262* v. *Gazzam*, 339 U.S. 532.

In *Norwalk Teachers' Assn.* v. *Board of Education*, *supra*, the Court stated:

> "Under our system, the government is established by and run for all of the people, not for the benefit of any person or group. The profit motive, inherent in the principle of free enterprise, is absent. It should be the aim of every employee of the government to do his or her part to make it function as efficiently and economically as possible. The drastic remedy of the organized strike to enforce the demands of unions of government employees is in direct contravention of this principle. It has been so regarded by the heads of the executive departments of the states and the nation."

Accord: *City of Alcoa* v. *International Brotherhood of Electrical Workers*, *supra*.

Courts of other states have upheld state statutes prohibiting strikes against governmental agencies where these constitutional questions were raised. In the *City of Detroit*

v. *Division 26 of Amalgamated Association*, 51 N.W. 2d 228 (1952), the Michigan Supreme Court held that a state statute which prohibited strikes against governmental agencies was constitutional as it did not violate the United States Constitution nor the State's Constitution, stating:

> ". . . it cannot be held, as defendants and cross-appellants contend, that by the Hutchinson Act the striking employees of Detroit's street railway system are subjected to a statute which violates the United States Constitution, art. 1 § 10, and the State Constitution, art. 2, § 9, prohibiting passage of bills of attainder; nor that they are deprived of rights without due process of law, United States Constitution, Fifth Amendment; State Constitution, art. 2, § 16; nor of equal protection of the laws, United States Constitution, Fourteenth Amendment; State Constitution, art. 2, § 1. * * * The Hutchinson Act cannot be held unconstitutional on any of the grounds just above noted."

The appeal to this Court from the decision of the Michigan Supreme Court was dismissed per curiam at 344 U.S. 805; rehearing was denied at 344 U.S. 882.

A similar constitutional contention, as is being made in this case, was asserted in *International Longshoremen's Association* v. *Georgia Ports Authority*, *supra*. The Union's Petition for Certiorari to this Honorable Court was denied in that case at 370 U.S. 922 (June 18, 1962).

CONCLUSION

Respondent respectfully submits that this Petition shows no basis upon which the Writ of Certiorari should be granted. Respondent further submits that the decisions rendered below are not discordant with previous decisions of this Court and do not involve a federal substantive question not heretofore decided by this Honorable Court. For

the reasons stated herein, Respondent respectfully requests that the Writ of Certiorari be denied.

Respectfully submitted,

L. G. Clinton, Jr.

L. G. Clinton, Jr.

Thomas R. McDade

Fulbright, Crooker, Freeman, Bates & Jaworski
Bank of the Southwest Building
Houston 2, Texas

J. L. Pickett, Jr.
P. O. Box 2562
Houston 1, Texas

Attorneys for Respondent

CERTIFICATE OF SERVICE

This is to certify that on the 28 day of March, 1963, a true and correct copy of the foregoing was served upon Messrs. Arthur J. Mandell and Sewell Myer, Attorneys for Petitioners, South Atlantic & Gulf Coast District of the International Longshoremen's Association, Independent, et al, by personally delivering and serving the same on the said Messrs. Arthur J. Mandell who maintains his offices in the South Coast Building, Houston, Texas, and Sewell Myer, who maintains his offices in the First City National Bank Building, Houston, Texas.

L. G. Clinton, Jr.
L. G. Clinton, Jr.

APPENDIX

No. 585,712

HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT, *Plaintiff*, v. SOUTH ATLANTIC & GULF COAST DISTRICT OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT, ET AL. *Defendants*.	IN THE DISTRICT COURT OF HARRIS COUNTY, TEXAS 151ST JUDICIAL DISTRICT

STIPULATIONS

It is hereby stipulated by and between HARRIS COUNTY-HOUSTON SHIP CHANNEL NAVIGATION DISTRICT, Plaintiff, and SOUTH ATLANTIC & GULF COAST DISTRICT OF THE INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, INDEPENDENT (hereinafter referred to as District), RALPH A. MASSEY, as a representaive of said District, PAUL F. KOEHNE, as a representative of said District, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, Local 872, RAYMOND DUNCAN, as a representative of said Local 872, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, Local 1273, WILLIE C. WELLS and JIM CLARK, as representatives of said Local 1273, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, Local 1530, LLOYD ALLEN, as a representative of said Local 1530, Defendants, that the following facts may be taken as true, solely for the purpose of this litigation.

I.

Harris County-Houston Ship Channel Navigation District is a governmental agency of the State of Texas, and is a political subdivision thereof, the same existing under Article XVI, Sections 52 and 59 of the Constitution and laws of the State of Texas, and is domiciled in Harris County, Texas.

Defendant South Atlantic & Gulf Coast District of the International Longshoremen's Association, Independent, is a labor organization within the meaning of the law of the State of Texas which represents employees in Houston, Harris County, Texas, and said District has an office and place of business in Galveston, Galveston County, Texas. Defendant Ralph A. Massey is an officer and a representative of said District, and said Defendant resides in Houston, Harris County, Texas. Defendant Paul F. Koehne is an officer and a representative of said District and resides in Houston, Harris County, Texas. Defendant International Longshoremen's Association, Local 872, is a labor organization within the meaning of the laws of the State of Texas, affiliated with said District and said Local 872 has its principal place of business in Houston, Harris County, Texas. Defendant International Longshoremen's Association, Local 1273, is a labor organization within the meaning of the laws of the State of Texas, affiliated with said District and said Local 1273 has its principal place of business in Houston, Harris County, Texas. The Defendants Willie C. Wells and Jim Clark are officers and representatives of said Local 1273 and both reside in Houston, Harris County, Texas. The Defendant International Longshoremen's Association, Local 1530, is a labor organization within the meaning of the laws of the State of Texas, affiliated with said District and said Local 1530 has its principal place of business in Houston, Harris County, Texas. Defendant Lloyd Allen is an Officer and a representative of said Local 1530 and resides in Houston, Harris County, Texas.

II.

Plaintiff is a governmental agency of the State of Texas, and is a political subdivision thereof, and owns and operates large and extensive wharves, warehouse facilities, grain elevators, bulk materials, handling facilities, which are operated in competition with private industry in the Port of Houston. At Plaintiff's wharves it receives and

delivers various types of cargo to and from ships; in its warehouses it handles, receives, stores, preserves and delivers various types of goods, wares, merchandise and commodities; in connection with the operations of its grain elevator, it receives, stores and ultimately discharges grains for domestic and foreign shipment; and, in connection with its bulk materials handling facilities, it receives and discharges dry bulk materials moving through the Port of Houston into and outside of the United States of America.

III.

Plaintiffs and Defendants agree that during 1961 a bulk materials handling plant was constructed at a cost of approximately $4,000,000.00 on Plaintiff's property in Harris County located adjacent to the Houston Ship Channel at Greens Bayou. The funds expended in connection with the construction of said plant were raised by the sale of bonds repayable from the revenue to be derived from said plant and the other facilities of Plaintiff.

IV.

Plaintiff began its operations of the Bulk Materials Handling Plant on or about September 21, 1961. Prior to the beginning of such operations, Plaintiff assigned its employees to various jobs in said plant.

V.

On or about January 5, 1962, representatives of said District and representatives of said Locals 872 and 1273 requested that certain work at the Bulk Materials Handling Plant be performed by members of said Locals 872 and 1273 and other persons working through the hiring halls of these Local Unions. As Plaintiff refused, Defendant Locals 872 and 1273 at approximately 7:30 a.m. on January 6, 1962, caused two (2) pickets to be established at the intersection of Penn City Road and the only road leading into said

Bulk Materials Handling Plant. One of said pickets carried a sign which read as follows:

Labor Dispute
with
ILA Local No. 1273
Longshoremen

The other said picket carried a sign which read as follows:

Harris County Houston Ship Channel
Navigation District
Gulf Has A-Stevedores
Labor Dispute
with
ILA Local No. 872
Longshoremen

At the time of the establishment of said picket lines, a ship RAMON de LARRINAGA was moored at Plaintiff's Bulk Materials Handling Plant awaiting to be unloaded. The cargo of said ship consisted of approximately 5,000 tons of zinc concentrate and the same was to be unloaded into railroad cars by the use of Plaintiff's facilities. When Plaintiff's employees who were scheduled to work at said plant arrived at approximately 8 A.M. on January 6, 1962, each of them refused to cross the picket lines. As a result, Plaintiff was unable to begin unloading the cargo of said ship. At approximately 3 p.m. on January 6, 1962, said picket lines were taken down long enough to permit certain members of Local 1273 to enter Plaintiff's premises and go aboard said vessel and to be available for work as required by Court Order entered in another proceeding, but immediately thereafter, said picket lines were re-established and Plaintiff's employees continued their refusal to cross the picket lines.

VI.

Officers and representatives of said District and said Locals 1273 and 872 have requested and continue to request that certain of the work at the Bulk Materials Handling Plant be performed by members of said Locals 1273 and 872, and by other persons working through the hiring-halls of these Local Unions.

This stipulation shall be without prejudice to the right of any party to introduce additional evidence of any kind.

DATED at Houston, Texas, this the 16th day of January, 1962.

APPROVED AND AGREED TO:

FULBRIGHT, CROOKER, FREEMAN, BATES & JAWORSKI

By: s L. G. CLINTON, JR.
s PAUL R. ROBERTSON

Attorneys for Plaintiff

SEWALL MYER
By: s SEWALL MYER

Attorneys for Defendants,

South Atlantic & Gulf Coast District of the International Longshoremen's Association, Independent and International Longshoremen's Association, Local 1273

MANDELL & WRIGHT
By: s ARTHUR J. MANDELL

Attorneys for Defendant,
International Longshoremen's Association, Local 872

DIXIE & SCHUPMAN
By: s MARION C. LADWIG

Attorneys for Defendant,
International Longshoremen's Association, Local 1530